Cr 390 (5)

माननीय उच्च न्यायालय छ.ग. बिलासपुर (छ.ग.)

Single Bench

द्वितीय अपील 419/2005

श्रीमति साबरा बेगम बेवा अब्दुल सत्तार
उम्र 45 साल निवासी मोटर स्टैण्ड वार्ड
धमतरी जिला धमतरी (छ.ग.).. .. अपीलार्थीनी/प्रतिवादिनी

विरूद्ध

नंदकिशोर खण्डेलवाल पिता ज्योति प्रसाद
उम्र 46 साल निवासी बनियापारा धमतरी
तह. व जिला धमतरी (छ.ग.) .. .. उत्तरवादी/वादी

द्वितिय व्यवहार अपील अंर्तगत धारा 100 व्य0प्र0सं

(23)

HIGH COURT OF CHHATTISGARH : BILASPUR

Second Appeal No. 419 of 2005

Appellant/ Defendant : **Smt. Sabra Begam**

Vs.

Respondent/ Plaintiff : **Nand Kishore Khandelwal**

Appellant/defendant by Shri A.W. Khan, Advocate.

ORDER
(Passed on 07/12/05)

Dhirendra Mishra, J

This is the defendant's second appeal as the suit preferred by the plaintiff was decreed by the trial Court and the first appeal preferred by the defendant has been dismissed by the learned Additional District Judge, Dhamtari by the impugned judgment and decree dated 29.06.2005. (Parties hereinafter shall be referred to as per their description before the trial Court.)

2. The plaintiff filed a suit for possession and damages on the ground that he purchased the suit house through registered sale deed for a consideration of Rs.30,000/- on 12.01.1987. At the time of transfer, transferor Barkatbee had promised that defendant shall vacate the house, however, when the defendant did not vacate as promised, the above suit for possession and damages of Rs.8,100/- towards rents paid by the plaintiff, was filed.

3. The defendant denied the suit and submitted that Gulamuddin, husband of Barkatbee had given the suit house by oral Hibanama to Abdul Sattar, husband of the defendant, therefore no title passed to the plaintiff on the basis of sale deed executed by Barkatbee.

4. However, learned trail Court decreed the suit by recording a finding that the possession of the defendant over the suit house is illegal and the plaintiff is entitled to recover damages of Rs.8,100/- at the rate of Rs.225/-

per month from the defendant and that there is no non-joinders of necessary party in the suit.

5. The findings of the trial Court has been subsequently confirmed by the lower appellate Court by the impugned judgment and decree.

6. Learned counsel for the appellant/defendant has challenged the concurrent findings of both the Courts below on the ground that both the Courts below have committed illegality by not relying on the oral evidence to the fact that Gulamuddin had given the suit house by oral Hibanama to Abdul Sattar and the suit was liable for dismissal for non-joinder of Barkatbee as a party. The findings of both the Courts below is based on one sided appreciation of evidence available on record.

7. I have heard learned counsel for the appellant/defendant.

8. It has been observed in the impugned judgment that the defendant had preferred an objection when the property was mutated in the name of Barkatbee as earlier it was recorded in the name of Gulamuddin, however, her objection was rejected but she did not challenge the mutation in the name of Barkatbee, demonstrates that the defendant had accepted the title of Barkatbee. Even otherwise both the Courts below have disbelieved the oral evidence of Hibanama by discussing the oral evidence adduced by the defendant in this regard.

9. The Courts below have disbelieved the existence of oral Hibanama on the other circumstance that the affidavit filed by Barkatbee for mutation bears the signature of Abdul Sattar as witness and thus relying upon the sale deed executed by Barkatbee in favour of the plaintiff, the Courts below have held that the plaintiff is the owner of the suit house and possession of the defendant is illegal and accordingly decreed the suit on the basis of proper and detailed appreciation of the evidence available on record.

10. On the basis of aforesaid analysis, this Court is of the considered view that findings of both the Courts below are the concurrent findings of facts and no substantial question of law as proposed by the defendant in the memo of appeal or any other, is involved for adjudication of this appeal.

11. Consequently, the appeal fails and is dismissed.

Sd/-
Dhirendra Mishra
Judge

Khan